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NTSB Order No. EA-4461

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of June, 1996

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. ROGER TILLER and RAFAEL MURGA, Respondents.	)	Dockets SE-13892 SE-13893

OPINION AND ORDER

The Administrator and Respondent Tiller have appealed from the oral initial decisions of Administrative Law Judge William R. Mullins, rendered in this proceeding at the conclusion of an evidentiary hearing held on May 23, 1995.[1] By the first

[1] Following a request from counsel for the respondents, and with no objection by the Administrator, the law judge rendered the initial decision in Mr. Tiller's case, then heard the testimony of Mr. Murga, after which he rendered the initial decision in Mr. Murga's case. Attached are two excerpts from the hearing transcript containing the two initial decisions.

decision, the law judge affirmed an order of the Administrator suspending the airframe rating of Respondent Tiller's mechanic certificate for 30 days for a violation of section 43.13(b) of the Federal Aviation Regulations ("FAR," 14 CFR Part 43),[2] and by the second, the law judge dismissed the same charge against Respondent Murga, also the holder of a mechanic certificate with an airframe and powerplant (A&P) rating.

(..continued)
Respondent Tiller has filed an appeal brief, to which the Administrator has replied.

On September 11, 1995, the Administrator filed an appeal brief in the Murga case. On October 11, 1995, respondent's counsel filed a written request for a 30-day extension of time to file his reply brief, claiming that potential conflict-of-interest issues had recently been raised by his client. The Administrator responded, stating that it was unclear whether respondent had asserted good cause for the extension request, under section 821.11(a) of the Board's Rules of Practice, and that he was reserving the right to request that any improper argument be striken from the reply.

Subsequently, the Administrator filed a Motion to Strike part of Respondent Murga's reply brief wherein, despite not appealing the initial decision, respondent improperly argued that the law judge erred, in part. Given our disposition of the case, however, we need not rule on the Administrator's motion.

[2] The pertinent regulation states, as follows:

§ 43.13 Performance rules (general).

* * * *

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

The suspension orders arose from the following circumstances. On March 19, 1993, a large panel approximately 17 feet long and between 8½ and 11 inches wide, and which appeared to be part of an aircraft control surface, was found in a parking lot located near the approach to Runway 12L at Miami International Airport (MIA). (Transcript (Tr.) at 15-16.) The FAA program manager at the Miami Flight Standards District Office (FSDO), Jeffrey Barnes, following extensive investigation, eventually was able to identify the piece as a portion of the trailing edge outboard fore flap from a Boeing 727. He also learned that TWA mechanics in St. Louis, Missouri (STL) on March 20, 1993, had discovered that such a part was missing from N54330, a TWA B-727-231 that they were examining because the flight crew who had operated the aircraft from Tampa, Florida, on that date had noted an airborne handling problem.

Another FAA inspector, Jim Orchard, testified that N54330 had been operated on March 19th into MIA, then from MIA to Kennedy International Airport (JFK), and then JFK to Tampa International Airport (TPA).[3] (Tr. at 41.) Following the flight from JFK to TPA, the flight crew made the following entry into the aircraft maintenance log:

> When flaps placed in 30° position, 3 units of right rudder trim, 3 units right aileron trim and right yoke deflection to maintain level [flight.] Flaps and leading edge devices indicate normal.

[3] Inspector Orchard testified that the missing piece found in Miami was a match with the remaining trailing edge that was removed from the aircraft in St. Louis. (Tr. at 31.)

(Exhibit (Ex.) A-4.)

On the night of March 19th, Respondent Tiller performed a scheduled periodic service check (PS) on the aircraft while it was in Tampa. Although he saw the logbook, he did not attempt to perform maintenance in response to the entry in the maintenance logbook. (Tr. at 112, 117.) He completed the PS, which included operating the hydraulic systems, fully extending the flaps, and performing a walk-around with the flaps fully extended. (Tr. at 120; Ex. A-3; and Respondent Tiller's Answer to the Administrator's complaint, December 12, 1994.)

Respondent Murga testified that he went on duty at about 11:15 p.m. on March 19th and was "given a turnover" from Mr. Tiller, who told him that "the logbook had an inbound remark as to aircraft needing some trim, and that he had accomplished a walk-around inspection on the aircraft." (Tr. at 124.) Mr. Murga did not check the flaps in their fully-extended position because he assumed that such an inspection had already been performed by Mr. Tiller. (Tr. at 125.)

Before beginning work, Respondent Murga had to move the aircraft off the gate and, in order to accomplish this, he retracted the flaps. He then contacted the TWA maintenance coordinator in Kansas City regarding the logbook entry, told him that a visual inspection had been done, and asked for instructions on how to proceed. (Tr. at 128.) The maintenance coordinator suggested that respondent check the leading edge flaps and the cables. After moving the aircraft back to the

gate, respondent extended the trailing edge flaps only five degrees.[4] (Tr. at 129.) He testified that because the flaps were not fully extended, he could not, at any time during his inspection, observe the trailing edge of the fore flap. Id. Since he could find nothing wrong with the aircraft, the maintenance coordinator advised him to clear the item and put a "trim sheet" onboard for further troubleshooting. To clear the item, respondent wrote in the maintenance log:

> Visually ckd all FLT control surfaces and cables found no irregularities. Cycled flaps and spoilers several times oper-nml. Provided outbnd crew with M99-27-05 sheets per MCIMP for further follow up. All sys ckd nml.

(Ex. A-4.)

The aircraft was next operated from TPA to STL on March 20, 1993. The flight crew made the following entry into the aircraft maintenance logbook after that flight:

> On approach at flaps 30°, an abnormal amount of right aileron was needed to keep aircraft level. (about 40 to 50° right aileron.) [A]ircraft trims normal in cruise.

(Ex. A-5.) TWA mechanics investigating this entry discovered that the aircraft was missing a portion of the trailing edge of the left outboard fore flap.[5]

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[4] Respondent Murga testified that he checked the cables from the wheel well and pushed in on the leading edges to ensure that the "actuators are not bypassing." (Tr. at 130.)

[5] The corresponding entry in the maintenance log read:

> Found the trailing edge of the left outboard fore flap missing. Replaced left outboard fore flap per M27-27-23. Ops check normal.

In the first initial decision, the law judge found that the aircraft repaired in St. Louis, N54330, was, in fact, the aircraft that had lost the piece of flap in Miami. (Tr. at 178.) He further found that Respondent Tiller's failure to notice, when the flaps were extended, the missing trailing edge of the left outboard fore flap during the PS (which constitutes preventive maintenance) that he conducted in Tampa established a violation of section 43.13(b).

In the second initial decision, the law judge concluded that Respondent Murga properly relied on the PS completed by Mr. Tiller which indicated that he had performed a visual inspection of the aircraft before Respondent Murga arrived for duty. Based on this finding, the law judge then concluded that the Administrator had failed to prove, by a preponderance of the evidence, the 43.13(b) charge against Mr. Murga.

On appeal, Respondent Tiller argues only that the Administrator failed to prove, by a preponderance of the evidence, that the aircraft was missing part of the left outboard fore flap when he conducted the PS. Our review of the record satisfies us, however, that the law judge had sufficient evidence upon which to base his conclusion that N54330 lost the part in Miami (before respondent performed the PS in Tampa) and that mechanics troubleshooting a control problem on the same aircraft in St. Louis the next day discovered that it was missing the very

(..continued)

(Ex. A-5.)

same part.

We have considered all of Respondent Tiller's contentions and find them unpersuasive. The law judge was required to find the facts proven by preponderant evidence, not beyond a reasonable doubt. There is ample evidence in the record to support his decision and we have been shown no reason to disturb that finding.

The Administrator argues in his appeal that the law judge erred in the second initial decision by dismissing the 43.13(b) charge against Respondent Murga. There, the law judge decided that Respondent Murga justifiably relied on the assertion by Mr. Tiller that he had completed a visual inspection and found no abnormalities, and that, consequently, the Administrator had not proven the charge by a preponderance of the evidence. For the reasons that follow, we must reverse the law judge's decision.

Tasked with performing the maintenance on N54330 in response to the flight crew's write-up, Respondent Murga came on duty after Mr. Tiller had completed the periodic service check. Respondent admitted that he did not visually check all the control surfaces but, nevertheless, signed off in the logbook as having completed the check because he believed Mr. Tiller had done it. He also told the maintenance coordinator in Kansas City that a visual inspection "had been done." The Administrator, citing Administrator v. DeLautre, NTSB Order No. EA-4310 at 7 (1995), argues that the reasonable reliance defense is not applicable to the performance of maintenance. We need not,

however, address that issue to decide this case, because respondent's reliance on Mr. Tiller's performance of scheduled, routine maintenance was unreasonable, under the circumstances.

Respondent Murga's job was to determine whether a mechanical or structural malfunction, which he had no reason to believe had been corrected during Respondent Tiller's routine inspection, had caused the aircraft to require unusual amounts of aileron and rudder input.[6] He was therefore obligated, before returning the aircraft to service, to perform whatever checks were necessary to discover the source of the trouble, even if that meant repeating some of the tasks he assumed may have been performed by someone else.[7]

Each mechanic was performing a separate function: one, routine maintenance, and the other, unscheduled maintenance aimed at a specific problem. Purely by chance, their shifts were consecutive and one of their tasks overlapped. That is not an adequate reason to permit respondent to disregard as unnecessary an examination that Mr. Tiller had performed as part of a separate maintenance function not intended to locate and correct

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[6] In response to the question, "[D]id you understand that Mr. Tiller was telling you that you did not have to check the flaps?," respondent stated, "He never told me, you don't have to do it." (Tr. at 140.)

[7] We should also mention that, as the mechanic responsible for troubleshooting this problem, his signature is a statement that the work described had been completed properly. See DeLautre at 5-7. Respondent argues that he did not have a duty to "re-do" Mr. Tiller's work. We believe the more pertinent statement is that respondent had a duty to accurately perform the work that, by his signature, he attested to completing.

a reported discrepancy.

In sum, we find that, by returning to service an aircraft that was not "at least equal to its original or properly altered condition," Respondent Murga violated FAR section 43.13(b). We further find that Respondent Tiller has not established any error in the law judge's initial decision in his case.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent Tiller's appeal is denied;

2. The Administrator's appeal is granted;

3. The initial decision in Respondent Tiller's case is affirmed and the initial decision in Respondent Murga's case is reversed; and

4. The 30-day suspensions, as set forth in The Administrator's Amended Orders of Suspension, of the airframe ratings of respondents' mechanic certificates, shall begin 30 days after service of this order.[8]

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

[8] For the purpose of this order, respondents must physically surrender their certificates to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).